

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

UNITED STATES OF AMERICA

v.

MICHAEL SEAN MCCABE

§  
§  
§  
§

CASE NO. 4:03CR20

BY  
DEPUTY

**REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release.

After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on October 8, 2008 to determine whether the Defendant violated his supervised release. The Defendant was represented by Denise Benson. The Government was represented by Teri Hagan.

On August 8, 2003, the Defendant was sentenced by the Honorable Paul Brown, United States District Judge, to 46 months imprisonment, followed by a 3-year term of supervised release for the offense of Possession of an Unregistered Firearm. March 2, 2007, Defendant was released from custody and ordered to commence service of a 3-year term of supervised release. On May 8, 2008, this matter was re-assigned to the Honorable Richard A. Schell, United States District Judge.

On May 14, 2008, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (Dkt. 34). The petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall refrain from any unlawful use of a controlled substance, and Defendant shall submit to one drug test within 15 days of release from imprisonment

and at least two periodic drug tests thereafter, as directed by the probation officer; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician; and (3) Defendant shall participate in a program of testing and treatment for drug abuse, as directed by the probation officer, until such time as Defendant is released from the program by the probation officer.

The petition and amended petition allege that Defendant committed the following violations: (1) Defendant submitted urine specimens that tested positive for marijuana on March 4, 10, and 27, 2008, and April 8, 11, 15, 21, 2008, and Defendant admitted verbally and in writing to continual use of marijuana subsequent to the initial positive urine specimen; and (2) Defendant failed to report for drug testing at Summit Counseling Center in Richardson, Texas on March 20 and April 17, 2008..

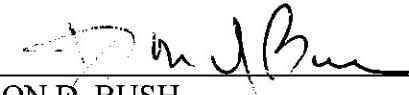
Prior to the Government putting on its case, Defendant entered a plea of true to the alleged violations. Defendant also waived allocution before a district judge. At the hearing, the Court recommended that Defendant's supervised release be revoked based on those violations.

#### **RECOMMENDATION**

Having heard the argument of counsel, the Court recommends that the District Court revoke the Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that the Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of six (6) months, with no supervised release to follow. The Court further recommends that Defendant carry out his term of imprisonment at a Bureau of Prisons facilities near

or close to Dallas, Texas, if possible.

SIGNED this 10 day of OCT, 2008.

  
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DON D. BUSH  
UNITED STATES MAGISTRATE JUDGE